DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection	)	
of Regulatory Fees for	)	MD Docket No. 95-3
Fiscal Year 1995	)	
	)	

COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby submits these comments on the Commission's Notice of Proposed Rulemaking to assess fiscal year 1995 regulatory fees.[1] CompTel is the principal industry association for the competitive interexchange industry, representing approximately 140 members. CompTel's membership will be directly affected by the proposals made in the *Notice*.

In these comments, CompTel first will show that Section 9 of the Communications Act[2] imposes an obligation upon the Commission to assess regulatory fees in such a way that the fee payment for each entity is proportional to the cost of regulation associated with that entity. Next, CompTel recommends modification of the proposal in two areas -- operator services and interexchange resale -- where the proposed fees would require disproportionate payments.

---

[1] *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, Notice of Proposed Rulemaking, MD Docket No. 95-3, FCC 95-14 (rel. Jan. 12, 1995) (*Notice*).

[2] 47 U.S.C. § 159.

I. THE COMMISSION IS REQUIRED TO ESTABLISH FEES THAT ARE PROPORTIONAL TO THE REGULATORY BURDEN CREATED BY THE ENTITY

When Congress authorized the Commission to collect regulatory fees from those entities subject to the Commission's jurisdiction, it limited the Commission's authority in several significant ways. First, the fees may be assessed to recover the costs only of certain Commission activities: enforcement, policy and rulemaking, user information services, and international activities. 47 U.S.C. § 159(a). In addition, the fees are to be adjusted in the case of individual entities to account for "factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities." *Id.* § 159(b)(1)(A). These statutory provisions create an obligation for the Commission to ensure that fees are collected from each entity in proportion to the amount expended by the Commission on enforcement, rulemaking, and end user information activities associated with the entity.

A few general observations follow from this conclusion. First, larger companies should pay more than smaller or regional companies, because larger companies generally require more regulatory resources, and benefit more from the Commission's regulation. Second, the nature and extent of the Commission's regulation must be taken into account. Activities that are largely deregulated or are subject to streamlined regulatory oversight create a smaller proportion of the Commission's regulatory burden, and entities engaged in those activities should pay a fee that reflects this circumstance. Also, entities that require only sporadic enforcement or policy/rulemaking attention should pay a lesser fee than entities for

whom the Commission's regulatory oversight is a matter of daily routine. Finally, the complexity of the regulatory issues should be considered when evaluating the proportion of the Commission's activities spent upon each class of regulated entity.[3]

Before assessing fees pursuant to its Section 9 authority, the Commission has an obligation to review the impact of a fee proposal on those entities subject to its regulation to ensure that fees are proportional to the burden created by regulating those entities. In at least two areas, the proposed fees are disproportionate to the regulatory activities expended by the Commission upon the entity.

II. THE COMMISSION'S PROPOSED INTEREXCHANGE SERVICES FEES WOULD REQUIRE A DISPROPORTIONATE PAYMENT FROM OPERATOR SERVICE PROVIDERS

Paragraphs 54-59 of the *Notice* describe the proposed fees for interexchange carriers, local exchange carriers, and other interstate communications providers. This proposal singles out operator service providers ("OSPs") for disparate treatment. While others pay a fee based upon the number of presubscribed lines, OSPs pay a regulatory fee based upon the number of "billing accounts" served.[4] The result is a fee for most providers based upon the number of lines served, but for operator service

---

[3] CompTel notes that although the *Notice* identifies the number of full-time equivalent employees associated with each Bureau (¶ 9), it does not fully explain how those numbers were derived. Thus, CompTel is without sufficient information at this time to comment upon the reasonableness of this aspect of the fee proposal.

[4] *See Notice* ¶ 59. Carriers are permitted to reduce the number of billing accounts to exclude those that are associated with presubscribed lines already reported by the IXC.

providers based upon the number of calls carried by the OSP. This difference in treatment requires OSPs to pay a higher fee than other interexchange carriers, without any explanation or justification for the disparate treatment.

Because operator services are used primarily by travelers and other transient users, each separate end user served is a "billing account" for an OSP. That is, the OSP accepts payment for its services using billing accounts established by the OSP, the customer's local exchange company, or by a commercial credit card company. The number of billing accounts served by the OSP, therefore, will relate directly to the number of calls it carries, since, except for repeat customers, each call requires a separate billing account. If this is the measure intended by the Commission,[5] the OSP fee would disproportionately burden operator service providers.

Other providers under the proposal pay a fee based upon the number of presubscribed lines served by the entity. The number of presubscribed lines does not directly measure call volume, because the extent of utilization on each presubscribed line is not a factor in the regulatory fee for non-OSP entities. Thus, only OSPs pay a fee that is volume-sensitive; others pay a capacity-based fee. Despite this difference, the fee is calculated using the same per unit rate: non-OSPs will pay $.13 for each line, even if it were used for 1,000 calls per month, while an OSP will pay a fee roughly equivalent to $.13 for each of those 1,000 calls.

---

[5] "Billing accounts" is not defined in the *Notice*.

Moreover, even among OSPs, entities that focus exclusively or primarily on operator service traffic are subjected to a greater obligation than entities that also provide traditional 1+ MTS service. Even though the traditional 1+ provider offers more services and is the beneficiary of a greater portion of the Commission's regulation, it is permitted to exclude "billing accounts" that are already counted as presubscribed lines. Therefore, the traditional 1+ provider does not pay *any* fee for the operator service calls placed by a 1+ subscriber (including those that are placed from locations other than where the presubscribed line is located), while other OSPs must pay fees for all of their customers. Again, this increased burden upon OSPs is not reasonably related to the benefit they receive from the Commission's regulatory activities.

To remedy this disparity, CompTel proposes that the Commission abandon the "billing accounts" standard and use a measure for operator service providers that is equivalent to the line-based standard used for other services. Therefore, CompTel proposes that operator service providers pay a regulatory fee that is based upon the number of aggregator lines served by the OSP. For this purpose, "aggregator lines served" should include presubscribed lines (unless reported elsewhere by the OSP) and any other service arrangement whereby the OSP is the "default" provider of operator services for the telephone. Adoption of this method would ensure that OSPs pay a regulatory fee on the same basis as any other interstate provider of interexchange services.

III. THE PROPOSED FEES SHOULD BE MODIFIED TO ELIMINATE DOUBLE PAYMENT IN INTEREXCHANGE RESALE SITUATIONS

A second area where the proposed fees would require disproportionate payments is in the resale of interexchange services. In at least two situations, the proposed fees require double payment of regulatory fees based upon the same underlying facilities. The usage of these facilities by both the facilities based and resale IXC do not require twice the resources devoted to enforcement, policy and rulemaking or end user information services. Therefore, the proposal requires payment that is not reasonably related to the regulatory burdens posed by the resale of interexchange services. Accordingly, the Commission should adjust its fee schedule to eliminate this double payment by requiring only one of the two entities to pay a fee based upon the resold facilities.

Double payment will result from at least two resale situations. First, in the instance of a private line facility provided to an IXC, the facilities based carrier is to pay a regulatory fee based upon the number of voice-equivalent lines of the facility.[6] Thus, a DS-3 provided to an IXC would be counted as 672 voice equivalent lines for the facilities based IXC. The resale IXC can use this private line in two ways, either one of which requires an additional regulatory fee to be paid by the reseller. First, the IXC can resell the facility as one or more private lines. In this instance, the IXC also pays for 672 voice equivalent lines (assuming all of the capacity is resold). If the IXC uses the private line as transport for switched services it provides, however, it must

---

[6] *Notice* ¶ 59.

pay for each presubscribed line at either end of the facility. Here again a second fee is paid for usage associated with the same facility.

A similar instance of double payment occurs when a facilities based IXC provides capacity that is resold by a switchless reseller. In this instance, the reseller's customers are presubscribed to the underlying IXC, thus adding to the base of presubscribed lines for which the facilities based IXC pays a regulatory fee. For the reseller, however, since it does not have any presubscribed lines, it pays a fee based upon the number of "billing accounts" it serves.[7] Each billing account for the reseller will correspond to a presubscribed line for the underlying carrier, thereby resulting in the reseller paying a second fee based upon the same facility.[8]

Double payment in these situations is contrary to the purposes of Section 9 of the Act because the fees imposed are not reasonably related to the specified regulatory activities expended upon the entities involved. In a resale situation, the amount of end user information services made available by the Commission is the same as in a non-resale situation, since only one end user is involved. Second, although two IXCs are

---

[7] *Notice* ¶ 59.

[8] Even under the Commission's alternative fee structure, which is based upon the number of interstate minutes of use (*Notice* ¶ 60), a double payment would occur in these resale situations. For the switchless reseller, both the reseller and underlying carrier will generate one minute of use for each minute of use by a customer. Similarly, in the private line resale situation, because the private line is not billed on a per minute basis, the facilities based carrier must use its billed revenue to calculate a per minute equivalent rate. In addition to this payment, however, the resale IXC will either pay another per minute equivalent, based upon its resold revenue, or will pay for each minute of switched service resold using the facility. In either event, two payments are based upon the same facility.

affected by any policy or rulemaking activities addressed to the resale situation, there is only a single set of issues created by the situation. Finally, there is no reason to believe that the burden of enforcement is doubled when two carriers are involved in providing service. In short, the resale of interexchange services creates regulatory burdens that are equivalent to the burdens created if a facilities based IXC provided service directly to the end user. Therefore, it is inequitable to penalize resale by requiring twice the payment for these services.

Instead, the Commission should amend its proposal to require only one of the two entities to pay a regulatory fee that is based upon the resold facility. The other entity should be permitted to deduct from any regulatory fees assessed upon it the fees paid by the other carrier. It does not matter which entity pays the fee, as the ultimate result will be the same.

CONCLUSION

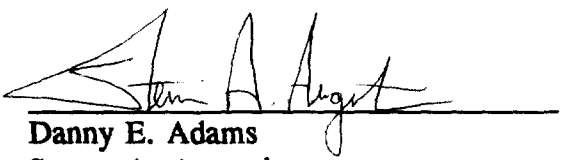
Section 9 of the Act authorizes the Commission to collect fees from regulated entities in order to offset the costs of the Commission's enforcement, policy and rulemaking and end user information services. The Act imposes an obligation upon the Commission to ensure that fees are paid by entities in proportion to the amount of regulation associated with its activities. In the areas of operator services and the resale of interexchange services, the fees proposed fail to meet this obligation. Both of these proposals should be adjusted to eliminate the disproportionate payments they currently would require.

Finally, CompTel notes that the *Notice* does not provide all of the information necessary for a party to assess the appropriateness of the Commission's estimate of full time equivalent employees performing the activities for which fees are to be collected. Also, the *Notice* does not provide sufficient explanation of how the Commission arrived at its estimates of the number of customer units expected to be reported under its proposals (which directly affect the fee per unit assessed upon regulated entities). Accordingly, CompTel's comments necessarily are limited by this lack of information, much of which is requested in a Freedom of Information Act request filed by the Personal Communications Industry Association (PCIA).

If additional information becomes available, CompTel may offer additional comment on the Commission's proposals.[9]

Respectfully submitted,

THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

By: 

Danny E. Adams
Steven A. Augustino
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Its Attorneys

Genevieve Morelli
Vice President and
General Counsel
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION
1140 Connecticut Ave., N.W.
Suite 220
Washington, D.C. 20036
(202) 296-6650

February 13, 1995

[9] See Order, MD Docket No. 95-3, DA 95-186 (Gen Counsel) (rel. Feb. 8, 1995) (permitting PCIA to submit additional comments via informal submission if necessary).